

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-013288

04/25/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

FERNANDO MALANADO

HARRY P FRIEDLANDER

v.

FIL-AM RENTAL INC

JAMES BURR SHIELDS II

REMAND DESK-LCA-CCC
SOUTH MESA-GILBERT JUSTICE
COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on March 5, 2003. This Court has considered and reviewed the record of the proceedings from the South Mesa/Gilbert Justice Court and the Memoranda submitted by counsel.

Background

This case was originally filed by Appellee/Plaintiff as a small claims action in the South Mesa/Gilbert Justice Court (the Hon. Tom Freestone) seeking to recover amounts Appellee claimed were owed to him for unpaid wages pursuant to an employment agreement with Appellant, Fil-Am Dental, Inc. In its answer Fil-Am filed a counterclaim seeking repayment of a \$3,000 loan it provided to Appellee, plus repayment of \$50 in wages that it had advanced Appellee and that Appellee failed to repay. After a short trial, Judge Freestone issued a ruling for the Appellee and dismissed the counterclaim. The judge also granted Appellee/Plaintiff's request for attorney's fees. On March 8, 2002, Appellee's counsel filed an Affidavit of Attorney's Fees, Statement of Costs and Computation of Interest with the court which it sought a sum of \$4,560

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and attorney's fees in the sum of \$1,504.80. On June 6, 2002, Judge Freestone awarded Appellee \$800.00 and attorney's fees in the amount of \$950.00.

The Appellant raises only one issue for review. The Appellant claims that the trial court erred in awarding Appellee's counsel \$950 in attorney's fees when the Appellee's contingent fee agreement with his attorney stated that the attorney would receive one-third (33%) of any amount recovered as attorney's fees, and Appellee only recovered \$800.

Discussion

Appellant argues that under Arizona law, an award of attorney's fees "may not exceed the amount paid or agreed to paid."¹ Attorney's fees awarded pursuant to A.R.S. Section 12-341.01 are discretionary with the trial court. The Appellant correctly points out that Section 12-341.01(B) acts to limit the recovery of attorney's fees actually paid or contracted, and the award may not exceed the amount paid or agreed to be paid, which was 33% of \$800.00.

This Court agrees with Appellant and the record in this case does not support the trial court's award of Appellee's attorney's fees of \$950. Therefore, the Appellee's attorney fee's award is reduced to the amount actually paid or contracted which includes three hundred dollars that was actually paid and two hundred sixty four dollars contracted for, which totals \$564.00.

IT IS ORDERED modifying the judgment of the South Mesa/Gilbert Justice Court in this case.

IT IS THEREFORE ORDERED granting Appellant's request for attorney's fees and costs. Counsel for Appellant shall submit an application and affidavit for attorney's fees and costs incurred on appeal to this court with a form of judgment no later than May 25, 2003.

IT IS FURTHER ORDERED remanding this matter back to the South Mesa Justice/Gilbert Justice Court for all further and future proceedings in this case with the exception of attorney fees and costs incurred on appeal.

¹ A.R.S. § 12-341.01(B); *Lacer v. Navajo County*, 141 Ariz. 392, 396, 687 P.2d 400 (App 1984).
Docket Code 512 Form V000A